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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

STEPHANIE CRUZ, individually and
on behalf of all others similarly
situated,

Plaintiff,

v.

BIJORA, INC. d/b/a AKIRA,

Defendant.

Civil Action No.:

**COMPLAINT – CLASS
ACTION**

- 1. FRAUD**
- 2. NEGLIGENT
MISREPRESENTATION**
- 3. BREACH OF CONTRACT**
- 4. UNJUST ENRICHMENT**
- 5. VIOLATION OF
CALIFORNIA’S
CONSUMER LEGAL
REMEDIES ACT**
- 6. VIOLATION OF
CALIFORNIA’S FALSE
ADVERTISING LAW**
- 7. VIOLATION OF
CALIFORNIA’S FALSE
ADVERTISING LAW,
BUS, & PROF. CODE**

**8. VIOLATION OF
CALIFORNIA UNFAIR
COMPETITION LAW**

JURY TRIAL DEMANDED

Plaintiff Stephanie Cruz (“Plaintiff”), individually and on behalf of all others similarly situated, brings this action against Defendant Bijora, Inc. d/b/a Akira (“Akira” or “Defendant”), and alleges based upon personal knowledge with respect to herself and on information and belief derived from, among other things, investigation of counsel and review of public documents as to all other matters:

NATURE OF THE ACTION

1. With the sheer volume of online products being offered, consumers rely on accurate pricing to make informed decisions. Unfortunately, many retailers engage in deceptive and misleading practices by advertising products as “sales” or “markdowns” by showing significantly inflated “reference prices” or “regular prices” that are rarely, if ever, actually charged. These fake reference prices fool consumers into thinking they are getting a great deal at

1 the “sale” price, when in fact, they have merely been tricked by the retailer,
2 and in reality the consumer is paying the same amount, or even more than,
3 the usual price of the item. The effect of this unlawful tactic is to set
4 consumers’ perception of the value of a product at a grossly inflated level,
5 thereby inducing consumers to unwittingly pay more for the product than they
6 might normally pay. Furthermore, researchers have found that when
7 consumers believe that the supposedly reduced price will end soon, they are
8 more likely to buy now, rather than wait or comparison shop, and buy
9 someplace else.¹ But in many instances, the reference price is not a true
10 discount.

14 2. Highlighting how these false sales have become a true problem in the
15 marketplace, the Federal Trade Commission (“FTC”) created a rule
16 prohibiting the practice. 16 C.F.R. § 233.1. The FTC identified this practice
17 as a form of “deceptive pricing” that denies consumers the value of the
18 bargain that they thought they were receiving.

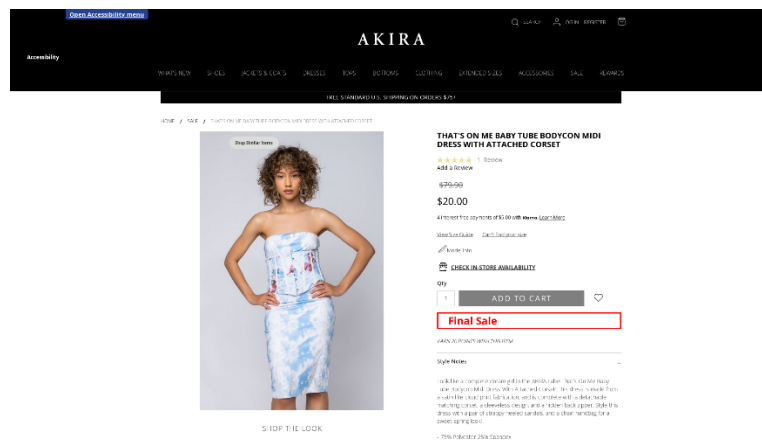
21 3. Akira has engaged in just such a deceptive pricing scheme. Akira
22 advertises perpetual or near perpetual discounts on many of its products,
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25 ¹ Patrick Coffee, Thought You Saved \$60 on that Vacuum Cleaner? Think
26 Again, Wall St. J. (Aug. 24, 2023), available at:
27 [https://www.wsj.com/articles/thought-you-saved-60-on-that-vacuum-
cleaner-think-again-c89ce344](https://www.wsj.com/articles/thought-you-saved-60-on-that-vacuum-cleaner-think-again-c89ce344) (Last accessed February 12, 2024).

1 supposedly offering discounts off Akira’s self-created, fictitious reference
2 prices. Akira represents to consumers that its reference price is the “regular”
3 or “normal” price of the item, which functions as a new and inflated reference
4 point from which consumers discount their “savings” on various products.
5

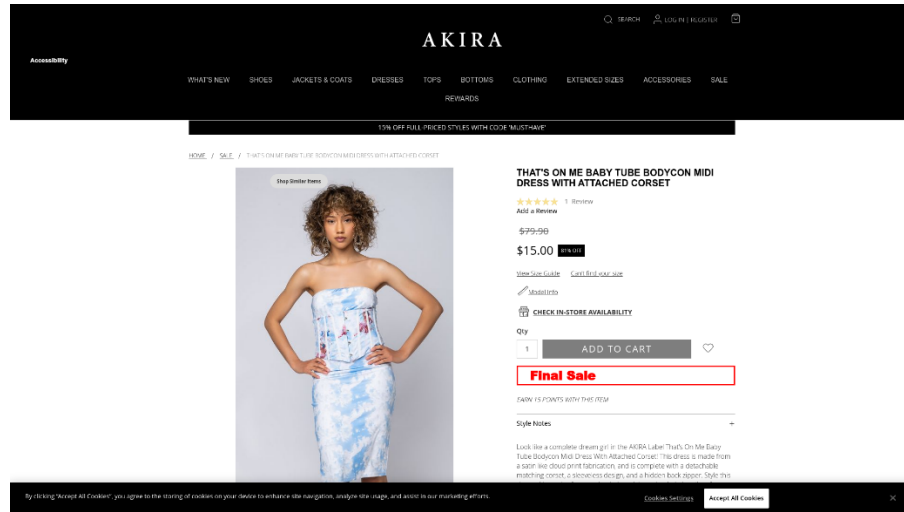
6 4. Akira’s reference prices are false because Akira rarely, if ever, offers
7 the products for the reference price. Instead, the inflated reference prices
8 allow Akira to continually advertise “sale” events and product discounts in
9 order to induce consumers into purchasing products. In reality, the “sale”
10 price is the price at which Akira regularly sells the product, but the consumer
11 has been tricked into thinking she found a great discount.
12

13 5. To illustrate, below is a February 14, 2024 screengrab from Akira’s
14 website for That’s On Me Baby Tube Bodycon Midi Dress “on sale” for \$20
15 from an original price of \$79.99.
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17 6. Below is a screengrab of the same product, taken from Akira’s website
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1 more than three months later, on May 20, 2024, which still reveals the inflated
2 reference price of \$79.99 and false discount price of, now, \$15.
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13 7. Akira's practice of falsely inflating reference prices in order to give the
14 illusion of higher value, bigger discounts, and a false sense of time pressure,
15 constitutes false advertising, and is an unfair and deceptive practice under
16 California's Consumer Legal Remedies Act ("CLRA") Cal. Civ. Code §§
17 1750 *et seq.*
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19 8. Accordingly, Plaintiff, on behalf of herself and the Classes (as defined
20 below) now seeks to hold Akira accountable for its unfair, deceptive, and
21 unlawful policy of displaying false or misleading discount or "sale" prices.
22 Plaintiff seeks to bring claims on behalf of a Nationwide Class and a
23 California Subclass (collectively "Classes") of consumers who purchased
24 falsely discounted products on Akira's website and is seeking, among other
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1 things, to recover damages and injunctive or declaratory relief ordering
2 Defendant to disgorge all revenues unjustly received from the proposed
3 Classes due to its intentional and unlawful practice of using false reference
4 prices and false discounts.
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6
7 **PARTIES**

8 9. Plaintiff Stephanie Cruz is an individual citizen of the State of
9 California and a natural adult person who resides in Riverside County,
10 California.
11

12 10. Akira, Inc. is an Illinois corporation with corporate offices
13 located at 200 N Fairfield Ave, Chicago, IL 60612.
14

15 **JURISDICTION AND VENUE**

16 11. The Court has subject matter jurisdiction over this action under
17 the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2). The amount in
18 controversy exceeds \$5 million, exclusive of interest and costs. Upon
19 information and belief, the number of class members is over 100, many of
20 whom have different citizenship from Defendant. Thus, minimal diversity
21 exists under 28 U.S.C. § 1332(d)(2)(A).
22
23

24 12. This Court has personal jurisdiction over Defendant because it
25 can be found in and operates in this District, and generally conducts
26 substantial business in the State of California. Defendant has sufficient
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1 minimum contacts in California, and/or otherwise intentionally avails itself to
2 the California market through the operation of its e-commerce website within
3 the State of California, knowingly and intentionally shipping goods into the
4 State of California for decades, and a substantial part of the unlawful business
5 practices which give rise to this action occurred in this District.
6

7
8 13. This Court may exercise personal jurisdiction over Defendant to
9 the fullest extent allowed under the Federal Due Process Clause. Defendant
10 has certain minimum contacts with the State of California. Defendant has and
11 continues to purposefully perform some acts or consummate some
12 transactions in the State of California, and Plaintiff's claims arise from, or are
13 connected with, Defendant's transactions. The assumption of jurisdiction by
14 this Court does not offend traditional notions of fair play and substantial
15 justice, consideration being given to the quality, nature, and extent of the
16 activity in the State of California, the relative convenience of the parties, the
17 benefits and protection of laws of the State of California afforded the
18 respective parties, and the basic equities of the situation.
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22 14. Akira further operates a website, www.shopakira.com, by which
23 Akira advertises and sells its goods in California. The website is regularly
24 viewed by and used to purchase products by consumers in California.
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27 15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)
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1 because a substantial part of the events giving rise to this action occurred in
2 this District. For example, Plaintiff was in Riverside County, California when
3 she saw the false discount representations on Akira's website and placed the
4 order on Akira's website after relying on the deceptive advertised price
5 displayed. Akira's shipped the goods Plaintiff purchased to Plaintiff's home
6 in Corona, California.
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9 **FACTUAL BACKGROUND**

10 **I. FALSE REFERENCE PRICING SCHEMES**

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12 16. Consumers' reactions to sales and to false sales are well studied
13 in academic literature. Research shows that reference prices, such as those
14 used by Defendant, materially impact consumers' behavior. A reference price
15 affects a consumer's perception of the value of the transaction, the consumer's
16 willingness to make the purchase, and the amount of money the consumer is
17 willing to pay for the product.²
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20 17. This deceptive practice involves three elements, most easily
21 shown through an example using a retailer that wants to sell a blue shirt with
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23

24 ² Urbany, Joel E., William O. Bearden and Dan Weilbaker (1988), "The
25 Effect of Plausible and Exaggerated Reference Prices on Consumer
26 Perceptions and Price Search," Journal of Consumer Research, 15 (June), 95–
27 110; Chandrashekar, Rajesh (2004), "The Influence of Redundant
28 Comparison Prices and Other Price Presentation Formats on Consumers'
Evaluations and Purchase Intentions," Journal of Retailing, 80 (1), 53–66.

1 a market value of \$35. First, the retailer advertises an inflated “reference
2 price” or the “strike through price” for that shirt, which the retailer wants the
3 consumer to believe is that shirt’s normal price. For this example, that price
4 is \$50. The problem is that the retailer has not actually sold the shirt for \$50,
5 nor could it do so because the market will not bear such an inflated price when
6 other similar blue shirts are sold for less. Instead that \$50 price is fictitious,
7 created by the retailer in order to show the consumer the second element in
8 the fraud: a supposed “discount” off that fictitious reference price. In this
9 example, that amounts to a 30% discount. Then, in the third element, the
10 retailer presents the consumer with the “new” discounted price of \$35 for the
11 blue shirt, which the retailer wanted to sell the shirt for all along. As part of
12 this scheme, the retailer wants the consumer to believe that the shirt is worth
13 \$50 and that the consumer is getting a deal by actually paying \$15 less, which
14 induces the consumer to make a purchase under the false belief that she is
15 getting a bargain on a more valuable shirt (30% off a \$50 product in this
16 example) and creates a false sense of urgency that the purported “discount”
17 or “sale” will end and the consumer will have to pay the “reference price” for
18 the shirt. Using this deception, retailers can even falsely induce consumers to
19 pay prices above the market price, for example \$40 for the blue shirt, because
20 the consumer still believes she is getting a deal, i.e., a 20% markdown.
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1 18. Accurate reference prices play an important role in consumers’
2 ability to compare products because they allow consumers to make informed
3 decisions by comparing one retailer’s prices to another. This is especially true
4 where the consumer is comparing similar, though not identical, products such
5 as two white T-shirts. In such circumstances, reference prices increase a
6 consumer’s interest in the product by increasing the consumer’s estimate of
7 savings offered by one retailer.³ “[A] higher plausible reference price . . .
8 consistently makes the offer appear to be a better value than if no reference
9 price appears.”⁴ Therefore, when a retailer advertises its products with
10 inflated reference prices, consumers are harmed because they are denied the
11 ability to accurately compare prices across the market, and they imbue the
12 advertised product with a false sense of value that they would not have
13 developed if the inflated reference price had not been listed.

14 19. Unsurprisingly, research shows that consumers prefer to get a
15 bargain. Indeed, “shoppers sometimes expend more time and energy to get a
16 discount than seems reasonable given the financial gain involved,” and “often
17 derive more satisfaction from finding a sale price than might be expected on
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25 ³ Blair, Edward A. and E. Laird Landon, Jr. (1981), "The Effects of Reference
26 Prices in Retail Advertisements," *Journal of Marketing*, 45 (Spring), 61-69.

27 ⁴ Urbany, The Effect of Plausible and Exaggerated Reference Prices on
28 Consumer Perceptions and Price Search, *supra* n. 1 at 106.

1 the basis of the amount of money they actually save.”⁵ The fear of losing such
2 a discount, because of the false impression given the retailer that the discount
3 or sale price will not last forever, often induces the consumer to purchase
4 quickly, without performing comparison shopping.

6 20. Studies also show that consumers are driven by internal and
7 external reference prices.⁶ Internal reference prices are a consumer’s price
8 expectations based on past experiences, stored in their memory. External
9 reference prices are prices encountered during the shopping experience, such
10 as suggested retail prices or sale tags.⁷ Research suggests that consumers
11 adjust their internal value expectations (i.e., internal reference prices) to align
12 with external reference prices they encounter.⁸ In addition, for infrequently
13 purchased items, or unique items, consumers may lack an actual internal
14 reference price simply because they have not priced the product previously,
15 and in such situations, consumers rely more heavily on the external reference
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21 ⁵ Darke, Peter and Darren Dahl. “Fairness and Discounts: The Subjective
22 Value of a Bargain.” *Journal of Consumer Psychology* 13, No. 3 (2003): 328–
338, at 328.

23 ⁶ Mayhew, Glenn E. and Russell S. Winer. “An Empirical Analysis of Internal
24 and External Reference Prices using Scanner Data.” *Journal of Consumer
Research* 19, No. 1 (1992): 62-70, at 68.

25 ⁷ *Id.* at 62.

26 ⁸ Grewal, Dhruv, Kent B. Monroe, and Ramayya Krishnan. “The Effects of
27 Price-Comparison Advertising on Buyers’ Perceptions of Acquisition Value,
28 Transaction Value, and Behavioral Intentions.” *The Journal of Marketing* 62
(1998): 46-59, at 48.

1 prices.

2 21. Retailers, including Defendant, understand that consumers are
3
4 vulnerable to perceived bargains. Thus, Akira's has a substantial financial
5 interest in exploiting consumers' well-known behavioral tendencies by
6 inducing consumers into believing they are receiving a bargain—even when
7 they are not. The phenomena of people disproportionately relying on an initial
8 piece of information when making a decision, known as “anchoring,”⁹ is
9 especially relevant in this context. Especially when shopping online,
10 consumers often encounter reference prices as the first, if not the only, insight
11 into a product's value besides the sale price itself. Thus, consumers use the
12 reference price as a baseline upon which to calculate a product's true value.
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16 22. Deceptive and misleading pricing such as that employed by
17 Defendant causes consumers to pay more than they otherwise would have
18 paid for products. It also misleadingly resets consumers' true value
19 expectations by falsely representing the value of products in order to trick
20 consumers into paying more than the products are actually worth.
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22 23. In addition to harming consumers, employing false reference
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25 ⁹ See Program on Negotiation, Anchoring Effect, HARV. L. SCH.,
26 <http://www.pon.harvard.edu/tag/anchoring-effect> (“[T]he anchoring effect,
27 [is] the tendency for the first offer to “anchor” the bargaining that follows in
28 its direction, even if the offer recipient thinks the offer is out of line.”).

1 pricing disrupts the integrity and fairness that underlies retail markets. When
2 unethical retailers use misleading reference prices, they gain an unfair
3 advantage over honest competitors offering similar products. In the forgoing
4 example, if the dishonest retailer is selling a blue shirt that is purportedly
5 valued at \$50 for just \$35, and the honest retailer is selling a similar \$35 blue
6 shirt for \$35, the online consumer, who cannot otherwise evaluate the true
7 value of the shirt, is more likely to buy the supposedly more valuable \$50
8 shirt, rather than the supposedly less valuable \$35 shirt. If such unlawful
9 advertising practices remain unchecked, businesses that adhere to honest
10 practices will continue to be unfairly disadvantaged.

14 24. Defendant knew or should have known that the use of false
15 reference prices was misleading consumers to believe that they were
16 receiving a “sale” when, in fact, they were not. Moreover, Akira intended for
17 reasonable consumers to understand the “sale” prices to be new prices that
18 Akira had reduced from its “regular” or “former” prices. Defendant
19 intentionally failed to disclose to Plaintiff and members of the Classes the
20 truth about its reference prices, i.e. that the prices were fabricated, and
21 Defendant never offered the items at the reference prices during the relevant
22 period. Defendant intentionally sought to convey to consumers that they were
23 receiving a true markdown.

1 25. Defendant intentionally enacted a broad pricing scheme designed
2 to mislead customers into believing that the reference prices were the prices
3 at which the advertised product was formerly listed and the prevailing market
4 rate of the advertised product.
5

6 **II. FALSE REFERENCE PRICING VIOLATES BOTH**
7 **FEDERAL LAW AND STATE LAW**

8 26. It is well-established that false reference pricing violates federal
9 and state law. Even so, retailers, including Defendant, continue to use the
10 tactic because they know they will be able to increase sales and profits by
11 tricking consumers into making purchase decisions based on the falsely
12 inflated reference prices. Though the information available to consumers
13 varies between different types of products, consumers frequently lack full
14 information about products and, as a result, often use information from
15 retailers to make purchase decisions.
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19 27. California law prohibits false reference pricing practices like
20 those used by Defendant. *See* Cal. Bus. & Prof. Code § 17501 (expressly
21 prohibiting false former pricing schemes); *see also* Cal. Civ. Code §
22 1770(a)(9) (prohibiting a business from “[a]dvertising goods or services with
23 intent not to sell them as advertised”), and Cal. Civ. Code § 1770(a)(13)
24 (prohibiting a business from “[m]aking false or misleading statements of fact
25 concerning reasons for, existence of, or amounts of price reductions”).
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1 28. The Ninth Circuit Court of Appeals recognizes the harm that can
2 come from advertising false and deceptive reference prices. In *Hinojos v.*
3 *Kohl's Corp.*, 718 F.3d 1098 (9th Cir. 2013), the court found that “[m]ost
4 consumers have, at some point, purchased merchandise that was marketed as
5 being ‘on sale’ because the proffered discount seemed too good to pass up.
6 Retailers, well aware of consumers’ susceptibility to a bargain, therefore have
7 an incentive to lie to their customers by falsely claiming that their products
8 have previously sold at a far higher ‘original’ price in order to induce
9 customers to purchase merchandise at a purportedly marked- down ‘sale’
10 price. Because such practices are misleading—and effective—the California
11 legislature has prohibited them.” *Id.* at 1101.

12 29. The FTC also recognizes the fraudulent nature of fictitious and
13 artificial sale pricing. The FTC’s rules have long included “Part 233—Guides
14 Against Deceptive Pricing” which states in relevant part:

15
16 One of the most commonly used forms of bargain
17 advertising is to offer a reduction from the
18 advertiser’s own former price for an article. If the
19 former price is the actual, bona fide price at which
20 the article was offered to the public on a regular
21 basis for a reasonably substantial period of time, it
22 provides a legitimate basis for the advertising of a
23 price comparison. Where the former price is
24 genuine, the bargain being advertised is a true one.
25 If, on the other hand, the former price being
26 advertised is not bona fide but fictitious
27 -- for example, where an artificial, inflated price
28

1 was established for the purpose of enabling the
2 subsequent offer of a large reduction -- the
3 “bargain” being advertised is a false one; the
4 purchaser is not receiving the unusual value he
5 expects. In such cases, the “reduced price” is, in
6 reality, probably just the seller’s regular price. 16
7 C.F.R § 233.1(a).

8 The FTC guidance provides several useful examples of such deceptive sales:

9 An advertiser might use a price at which he never
10 offered the article at all; he might feature a price
11 which was not used in the regular course of
12 business, or which was not used in the recent past
13 but at some remote period in the past, without
14 making disclosure of that fact; he might use a price
15 that was not openly offered to the public, or that was
16 not maintained for a reasonable length of time, but
17 was immediately reduced. 16 C.F.R § 233.1(d).

18 **III. DEFENDANT USED FALSE REFERENCE PRICING TO** 19 **DECEIVE ITS CUSTOMERS**

20 30. Using deceptive pricing tactics, Defendant lures consumers by
21 advertising its products at seemingly discounted “sale” prices compared to
22 significantly marked-up reference prices. These fictitious reference prices are
23 never actually charged, making the “discounts” misleading.

24 31. Defendant’s advertised discounts are fictitious because the
25 reference prices do not represent a bona fide price at which Defendant
26 previously sold, or offered to sell, the products on a regular basis, for a
27 commercially reasonable period of time, as required by the FTC. In addition,
28 the advertised reference prices were not the prevailing market retail price

1 within the three months (90 days) immediately preceding the publication of
2 the advertised former reference price, as required by California law.

3
4 32. As a direct result of Defendant's actions, all consumers who
5 purchased products that were advertised with false reference prices and/or
6 misleading discounts on Defendant's website have been deceived and have
7 been undeniably harmed, in that they would not have purchased these
8 products but for the misleading pricing. They have suffered an economic
9 injury by being misled into paying more than the products were actually
10 worth.
11
12

13 33. Defendant's false pricing scheme has directly harmed all
14 customers who were tricked into buying discounted products on its website.
15 By creating a false perception of significant savings, Akira fraudulently
16 inflated demand for its products. This has shifted the demand curve, allowing
17 Akira to charge higher prices and generate more sales than would have been
18 possible had it used honest pricing practices.
19
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21 34. Consumers, like Plaintiff, were deceived by Defendant's
22 misleading discounts. They did not receive the substantial savings that were
23 advertised, nor were the products actually worth the inflated reference prices.
24 Moreover, consumers would not have purchased the products at the purported
25 "sale" price but for the misleading reference price.
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1 35. The misleading nature of Defendant's reference prices and
2 discounts was cleverly disguised and could not be detected by a reasonable
3 consumer exercising due diligence, particularly because the deception was
4 hidden over an extended period of time. The only way for a consumer to
5 detect Defendant's deception would be if the consumer meticulously followed
6 the price of the product every day for months, especially for retailers like
7 Defendant, who often sells custom items (i.e., items under its own brand).

10 36. Defendant continues to engage in these deceptive practices on its
11 website by advertising false reference prices and misleading discounts. There
12 is no indication that it will voluntarily cease these tactics. Even if it were to
13 stop temporarily, there is a high risk that it would resume these deceptive
14 practices in the future.

17 37. Defendant's actions towards consumers and the general public
18 demonstrate malice, fraud, and/or oppression. Its deceptive practices have had
19 a significant negative impact on the Plaintiff, the Classes of affected
20 consumers, and the public at large.

22 38. The advertised reference prices and discounts for Defendant's
23 products on Defendant's website are misleading. The "sale" price is often
24 very close to, if not higher than, the true price for these products. The listed
25 reference price of Defendant's products is inflated and does not reflect the
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actual selling price.

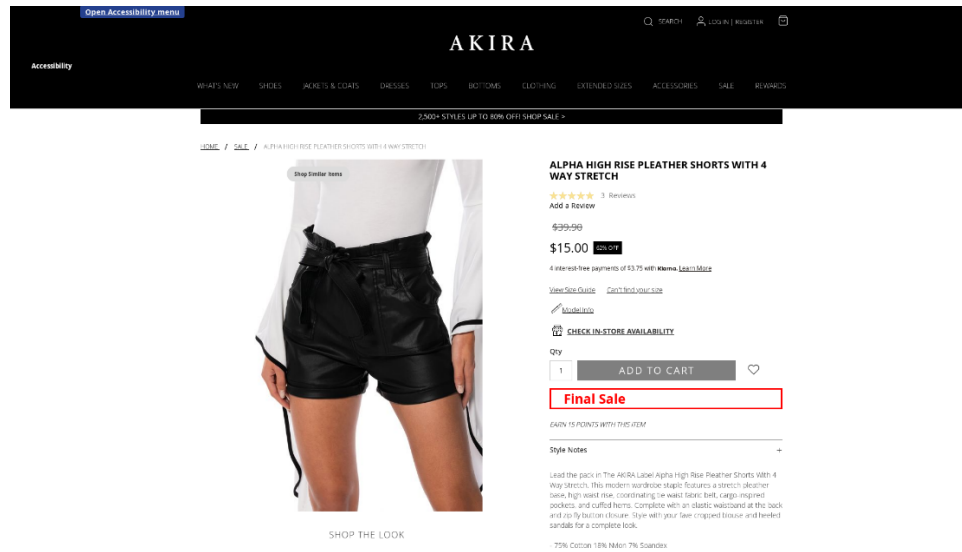
39. For example, during the 99-day period from February 14, 2024 through May 23, 2024, the following products have been offered at a “discount,” when in fact they were not sold at the reference price at any point during that time period:

Product Name	Reference Price	Days Sold at Reference Price	Days “On Sale”
Puma Team Ribbed Legging	\$45	0	98
Alpha High Rise Pleather Shorts with 4-way Stretch	\$39.90	0	98
Diamond Lace Up Track Pant in Black Silver	\$69.90	0	98
Genuine Ostrich Feather Sleeveless Cropped Halter	\$99.90	0	98
Marley Ultra Long Crochet Fringe Blouse	\$69.90	0	98
Raise Your Glass Embellished Corset	\$119.90	0	98
Runway Oversized Hooded Sweater in Black	\$69.90	0	98
Mission Accomplished Multi Way Bomber Scarf Jacket	\$79.90	0	98
Gallery Hopping Layered Satin Mini Dress	\$69.90	0	98
Painted Tattoo Straight Leg Denim	\$59.90	0	98
Too Sweet For You Babydoll Dress	\$99.90	0	98

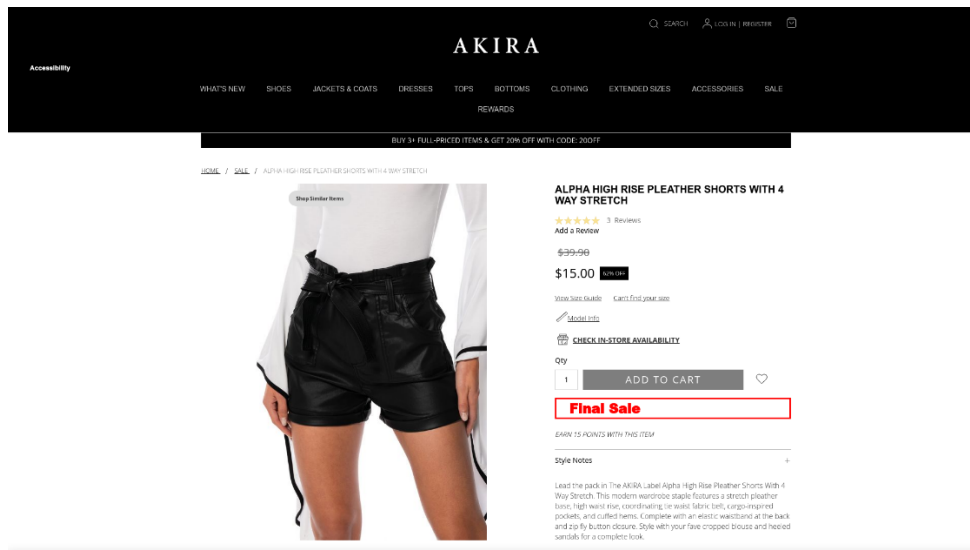
Show Out Fringe Mini Dress	\$119.90	0	98
Hamburg Street Style Trouser	\$49.90	0	98
Like A Painting Tiered Maxi Dress	\$169.90	0	98
Nothing But Time Corduroy Cargo Pant	\$69.90	0	98
Wishlist Mesh Textured Maxi Dress	\$69.90	0	98

40. The reference chart above contains merely a fraction of those products listed as “discounted” on Akira’s website when, in fact, they were not listed any time for the referenced price in the preceding 90 days.

41. The below screen shot is an example of how Akira presents its deceptive pricing to consumers. It shows the Alpha High Rise Pleather Shorts with 4 Way Stretch, listed at a discount price of \$15, which reflects approximately 60% savings off of the “reference” price of \$39.90. This screenshot is from February 19, 2024.

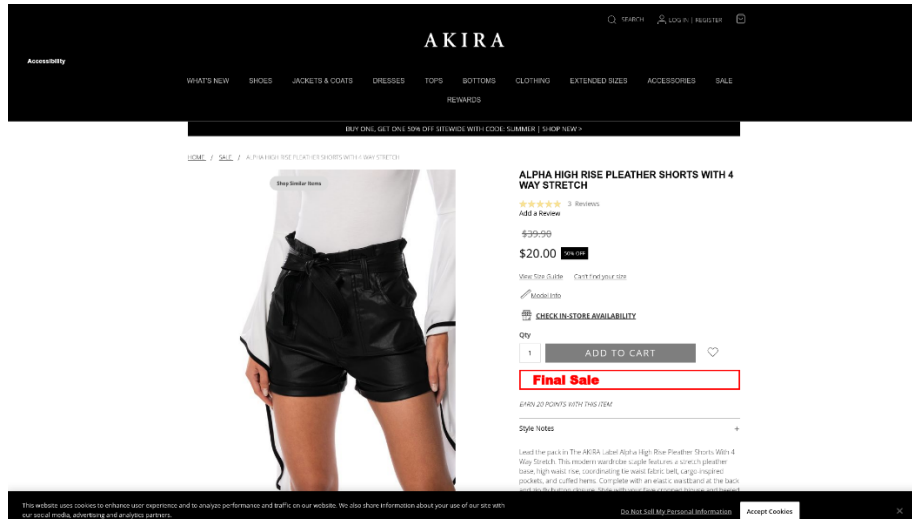


42. Just over two months later, on April 22, 2024, the Alpha High Rise Pleather Shorts with 4 Way Stretch, listed still at a supposedly discounted price of \$15, reflecting approximately 60% savings off of the “reference” price of \$39.90.



43. Approximately two months later, on June 24, 2024, the Alpha High Rise Pleather Shorts with 4 Way Stretch were still listed at a supposedly

1 discounted price of \$20, reflecting approximately 50% savings off of the
2 claimed “reference” price of, still, \$39.90.

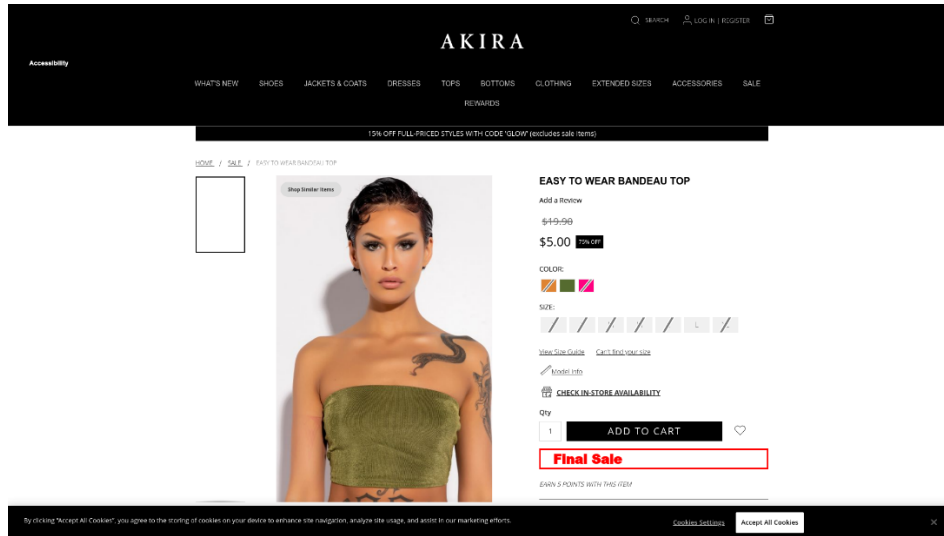


13 44. For a significant and uninterrupted period of time over several
14 months, Akira ran what appeared to be sales on many of its products. These
15 supposed discounts were often substantial, reaching more than 50%. Even
16 though the exact discount amount might fluctuate slightly, the products were
17 advertised as on “sale;” however, all or nearly all the advertised sale products
18 are never actually offered for purchase or sold at the reference price.
19

21 IV. PLAINTIFF FELL VICTIM TO DEFENDANT’S 22 DECEPTIVE PRACTICES

23 45. Plaintiff is, and at all relevant times has been, a resident and
24 citizen of the State of California. In or around June 11, 2024, while browsing
25 Defendant’ website, Plaintiff saw an advertisement boasting significant
26 “savings” on various products.
27
28

1 46. Defendant's website presented an original marked-through price,
2 which was the reference price, to the right of the lower "sale price." The below
3 image represents what Plaintiff saw when purchasing the top:



14 47. After seeing the reference price of \$19.90, Plaintiff specifically
15 chose to purchase the product because Plaintiff believed she was receiving a
16 significant discount on the product she had chosen. Because she was
17 interested in the product and felt that the discounted price would likely not
18 last, and that she was getting a significant bargain on the product, Plaintiff
19 chose to immediately move forward with purchasing it. As a reasonable
20 consumer, she trusted that the products had a value commensurate with the
21 reference price. Thus, the advertised "sale" appeared to be a genuine discount.

25 48. Relying on the advertised savings, Plaintiff added the products
26 to her cart and completed the purchase. A copy of the receipt is attached hereto
27
28

1 as **Exhibit A.**

2 49. Unbeknownst to Plaintiff, Akira rarely, if ever, offered its
3 products at the advertised “regular” reference prices, and did not do so for the
4 product Plaintiff purchased at any time in the 90 days prior to that purchase.
5 Simply put, Defendant intentionally deceived Plaintiff. The actual value of
6 the product purchased did not match the inflated reference price Plaintiff was
7 led to believe was the true value of the product. Thus, the advertised “sale”
8 wasn't a deal, or even a sale, at all.
9

10
11 50. Defendant’s inflated reference prices and misleading discounts
12 were significant and material misrepresentations that directly influenced
13 Plaintiff’s purchase. Plaintiff relied on this false information in good faith.
14 Had Plaintiff known the truth, she would not have bought the product for the
15 price that she did.
16

17 51. Defendant’s misrepresentations were material because a
18 reasonable consumer relies on such information when making purchasing
19 decisions.
20

21 52. As a direct consequence of Defendant’ actions, Plaintiff was
22 financially harmed. She would not have purchased the product at the same
23 price absent Defendant’ misrepresentation. The advertised discounts were
24 illusory, and the products were not worth the reference price listed by
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1 Defendant, as Plaintiff was led to believe.

2 53. Moreover, Plaintiff was damaged because Defendant's false
3 pricing scheme inflated the true market value of the item Plaintiff purchased.
4 Even though Defendant's false pricing scheme is pervasive on its website, not
5 every advertised sale is in fact false, and as such, without substantial effort,
6 Plaintiff and other consumers cannot know which sales are false and which
7 are true. Thus, Plaintiff is susceptible to this reoccurring harm because she
8 cannot be certain that Defendant has corrected the deceptive pricing scheme,
9 and Plaintiff desires to shop at Defendant's website in the future. Plaintiff
10 does not have the resources to always (or even regularly) determine whether
11 Akira is complying with state and federal law with respect to its pricing
12 practices by watching the price over the course of several months.
13

14 54. Plaintiff has the legal right – now and in the future – to expect
15 truthful and accurate information from Defendant regarding advertised prices
16 and discounts. Plaintiff, and the other members of the Classes, will be harmed
17 if, in the future, they are left to guess as to whether Akira is providing a
18 legitimate sale, and whether products are actually worth the amount that
19 Defendant is representing. If Plaintiff were to trust that Defendant has
20 reformed its pricing practices and were to purchase again from Defendant,
21 she would have no way of knowing if the advertised discounts were
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1 legitimate. Plaintiff continues to be interested in purchasing products that are
2 sold by Defendant and offered at discounted prices, but she will be unable to
3 trust and rely on Defendant's website pricing. Absent injunctive relief,
4 Plaintiff cannot know whether Defendant's reference prices represent true
5 former prices, and the true value of the item, or inflated reference prices
6 employed in order to deceive customers into believing that a legitimate
7 discount is being offered. Thus, Plaintiff will be harmed on an ongoing basis
8 and/or will be harmed once or more in the future.

11
12 55. The deceptive practices described herein are not limited to the
13 specific product Plaintiff purchased or categorical group of products. The
14 misleading advertising and sales tactics employed by Akira are systematic
15 and widespread across its entire website, impacting customers nationwide.

17 **V. CLASS DEFINITION AND ALLEGATIONS**

18
19 56. Plaintiff brings this action pursuant to Rule 23(b)(2) and (b)(3)
20 of the Federal Rules of Civil Procedure on behalf of herself and on behalf of
21 all other persons similarly situated.

22
23 57. Plaintiff proposes the following Class definitions, subject to
24 amendment as appropriate:

25 **Nationwide Class (the "Nationwide Class" or**
26 **"Class")**

27 All individuals who, within the applicable
28 limitations period, purchased from the Defendant's

1 website one or more products that were advertised
2 or promoted by displaying or disseminating a
3 reference price or discount for an item that was not
4 advertised for sale at the reference price at any point
in the 90 days preceding their purchase.

5 **California Subclass (“California Subclass” or**
6 **“Subclass”)**

7 All individuals who, within the applicable
8 limitations period, purchased from the Defendant’s
9 website one or more products that were advertised
10 or promoted by displaying or disseminating a
11 reference price or discount for an item that was not
12 advertised for sale at the reference price at any point
13 in the 90 days preceding their purchase.

14 58. Excluded from the Class and Subclass (collectively “Classes”)
15 are Defendant, their parents, subsidiaries, affiliates, officers and directors, and
16 judicial officers and their immediate family members and associated court
staff assigned to this case.

17 59. Plaintiff reserves the right to modify or amend the definitions of
18 the proposed Classes before the Court determines whether certification is
19 appropriate.
20

21 60. The proposed Classes meet the criteria for certification under
22 Fed. R. Civ. P. 23(a), (b)(2), and (b)(3).
23

24 61. **Numerosity:** This action is appropriately suited for a class
25 action. The members of the Classes are so numerous that the joinder of all
26 members is impracticable. Upon information and belief, the proposed Classes
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1 contain well over 100 members, and likely thousands of individual purchasers
2 who have been damaged by Defendant's conduct as alleged herein, the
3 identity of whom is within the knowledge of Defendant and can be easily
4 determined through Defendant's records.
5

6 **62. Commonality:** This action involves questions of law and fact
7 common to the Classes. The common legal and factual questions include, but
8 are not limited to, the following:
9

- 10 a. Whether Defendant made false or misleading statements of fact
11 in its advertisements;
- 12 b. Whether Defendant's policies and actions regarding its
13 advertising were unfair, deceptive, or misleading;
- 14 c. The accuracy of Defendant's advertised reference prices and
15 discounts;
- 16 d. Whether Defendant breached their contract with Plaintiff and the
17 Class members;
- 18 e. Whether Defendant were unjustly enriched as a result of its
19 actions with respect to reference pricing and discounts
20 advertised;
- 21 f. Whether the alleged conduct of Defendant violates California
22 Civil Code §§ 1750 *et seq.*, California Business & Professions
23 Code §§ 17500 *et seq.*, California Business & Professions Code
24 §§ 17501 *et seq.* and/or California Business & Professions Code
25 §§ 17200 *et seq.*
- 26 g. Whether Plaintiff and the members of the Classes have suffered
27 injury and have lost money or property as a result of such false
28 or misleading discounts and reference prices;

1
2 h. Whether Defendant should be enjoined from further engaging in
3 the misconduct alleged herein.

4 i. Whether Plaintiff and the members of the Classes are entitled to
5 declaratory and injunctive relief and the nature of that relief.

6 63. **Typicality:** Plaintiff's claims are typical of the claims of the
7 members of the Classes, because, *inter alia*, Plaintiff and all members of the
8 Classes purchased Defendant's products advertised at a discount on
9 Defendant's website. Moreover, Plaintiff's claims are typical of the Class
10 members' claims because Plaintiff is advancing the same claims and legal
11 theories on behalf of herself and all members of the Classes. In addition,
12 Plaintiff is entitled to relief under the same causes of action and upon the same
13 facts as all other members of the proposed Classes.

14 64. **Adequacy:** Plaintiff will fairly and adequately represent and
15 protect the interests of the members of the Classes and has retained competent
16 counsel experienced in complex litigation and class action litigation. Plaintiff
17 has no interests antagonistic to those of the members of the Classes and
18 Defendant has no defenses that are unique to Plaintiff.

19 65. **Superiority:** A class action is superior to other methods for the
20 fair and efficient adjudication of this controversy. The damages or other
21 financial detriment suffered by individual class members is relatively small
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1 compared to the burden and expense that would be created by individual
2 litigation of their claims against Defendant. It would be virtually impossible
3 for a member of the Classes, on an individual basis, to obtain effective redress
4 for the wrongs done to him or her. Further, even if the members of the Classes
5 could afford such individualized litigation, the court system could not.
6 Individualized litigation would create the danger of inconsistent or
7 contradictory judgments arising from the same set of facts. Individualized
8 litigation would also increase delay and expense to all parties and the court
9 system arising from such individual claims. By contrast, the class action
10 device provides the benefits of adjudication of these issues in a single
11 proceeding, economies of scale, and comprehensive supervision by a single
12 court, and presents no management difficulties under the circumstances here.

13 66. Plaintiff seeks monetary damages, including compensatory
14 damages on behalf of the Classes, and other equitable relief on grounds
15 generally applicable to the Classes as a whole and to the public. Unless a Class
16 is certified, Akira will be allowed to profit from its unfair and unlawful
17 practices, while Plaintiff and the members of the Classes will have suffered
18 damages. Unless a Class-wide injunction is issued, Akira will likely continue
19 to benefit from the violations alleged, and the members of the Classes and the
20 general public will likely continue to be victimized.
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1 67. Akira has acted and refused to act on grounds generally
2 applicable to the Classes, making final injunctive relief appropriate with
3 respect to the Classes as a whole.
4

5 68. All applicable statutes of limitations have been tolled by the
6 delayed discovery doctrine. Plaintiff and members of the Classes could not
7 have reasonably discovered Defendant's practice of running perpetual and/or
8 extended sales, based on deceptive reference prices and deceptive sale prices,
9 at any time prior to commencing this class action litigation.
10

11 69. A reasonable consumer viewing Akira's website on multiple
12 occasions would simply believe that a product just happens to be on sale when
13 the consumer is on the website. Short of visiting and checking the website for
14 months continuously or creating automated means of recording the price over
15 a substantial period of time, a reasonable consumer would not suspect that
16 Defendant's sales and pricing practices were false or misleading. Nor would
17 a reasonable consumer be able to ascertain the true value of the products being
18 sold absent extensive investigation, which reasonable consumers would not
19 be on notice to have to do.
20

21 70. Plaintiff did not learn of Defendant's deceptive practices alleged
22 herein until shortly before retaining counsel in this action.
23

24 71. As a result, any and all applicable statutes of limitations
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1 otherwise applicable to the allegations herein have been tolled.

2 **CAUSES OF ACTION**

3 **COUNT I**

4 **FRAUD – INTENTIONAL MISREPRESENTATION AND**
5 **OMISSION**

6 **(On behalf of Plaintiff and the Class)**

7 72. Plaintiff repeats and realleges each and every allegation
8 contained in paragraphs 1–71 as if fully set forth herein.

9
10 73. Defendant made false and misleading statements of fact and
11 material omissions concerning the existence reference prices and the amounts
12 of price reductions. These representations were false because the false
13 reference prices advertised in connection with products offered on the website
14 misled, and continue to mislead, consumers into believing the products were
15 previously sold on the website at the higher reference prices, when in fact they
16 were not. Defendant knew that these representations were false at the time
17 that it made them and/or acted recklessly in making the misrepresentations.

18
19
20 74. Defendant had a duty to accurately disclose the truth about its
21 pricing information, including that the reference prices advertised on the
22 website were not truly former prices and that the “discount” price advertised
23 was not truly a discount. Reasonable consumers were likely to be deceived,
24 and were deceived, by Defendant’s failure to disclose material information.

25
26 75. Defendant knew that the items Plaintiff and the members of the
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1 Class purchased had rarely, if ever, been offered or sold on the website at the
2 higher reference price in the recent past.

3
4 76. Defendant's representations were made with the intent that
5 Plaintiff and the members of the Class would rely on the false representations
6 and spend money they otherwise would not have spent, purchase items they
7 otherwise would not have purchased, and/or spend more money for an item
8 than they otherwise would have absent the deceptive pricing scheme.
9

10 77. Defendant employed this scheme in order to incentivize
11 consumers with the sole intent of maximizing profits to the detriment of those
12 same consumers.
13

14 78. Defendant intended that Plaintiff, and all members of the Class,
15 rely on its false representations. Plaintiff and all members of the Class
16 reasonably relied on Defendant's representations. Absent Defendant's
17 misrepresentations, Plaintiff and the members of the Class would not have
18 purchased the items from Defendant, or, at the very least, they would not have
19 paid as much for the items as they ultimately did. Plaintiff's and the Class
20 members' reliance was a substantial factor in causing their harm.
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23

24 79. Had the true reference price not been omitted, Plaintiff and the
25 members of the Class reasonably would have behaved differently. Among
26 other things, they would not have purchased the items they purchased from
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28

1 Defendant or, at the very least, would not have paid as much for the items as
2 they ultimately did.

3
4 80. As a direct and proximate result of the above, Plaintiff and the
5 members of the Class have suffered damages because: (a) they would not have
6 purchased Defendant's products if they had known that the representations
7 were false, and/or (b) they overpaid for the products because the products
8 were sold at a premium price due to the misrepresentations.
9

10 81. Plaintiff and the members of the Class are also entitled to
11 punitive or exemplary damages. Defendant, through senior executives and
12 officers, undertook the illegal acts intentionally or with conscious disregard
13 of the rights of Plaintiff and the Class, and did so with fraud, malice, and/or
14 oppression.
15
16

17 82. Based on the allegations above, Defendant's actions were
18 fraudulent because Defendant intended to and did deceive and injure Plaintiff
19 and the members of the Class. Based on the allegations above, Defendant's
20 conduct was made with malice because Defendant acted with the intent to
21 cause and did cause injury to Plaintiff and all members of the Class, and
22 because Defendant willfully and knowingly disregarded the rights of Plaintiff
23 and all members of the Class.
24
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26

27 **COUNT II**
28 **NEGLIGENT MISREPRESENTATION**

(On behalf of Plaintiff and the Class)

83. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 – 82 as if fully set forth herein.

84. As alleged more fully herein, Defendant made false or misleading statements and/or material omissions of fact concerning the existence of and the amounts of price reductions because Defendant falsely represents the products as on sale, when in truth the reference price was a fictitious price, rendering the purported “sale” a fictitious discount. When Defendant made these misrepresentations, it knew or should have known that they were false. Defendant had no reasonable grounds for believing that these representations were true when made.

85. By choosing to advertise a reference price, Defendant had a duty to accurately disclose the truth about its pricing, including the fact that the reference prices advertised and published on the website were not truly former prices and that the “discount” price advertised was not a true discount.

86. Defendant knew its sales were falsely advertised with a false reference price. Defendant also knew or should have known that the reference prices were not the prevailing market prices or true value of the products. Defendant further knew that the items Plaintiff and the Class purchased had rarely, if ever, been offered or sold on the website at the false reference price.

1 87. Defendant had no good faith or reasonable basis to believe that
2 its representations were true when made.

3
4 88. Defendant's representations were made with the intent that
5 Plaintiff and the members of the Class rely on the false representations and
6 spend money they otherwise would not have spent, purchase items they
7 otherwise would not have purchased, and/or spend more money for an item
8 than they otherwise would have absent the deceptive pricing scheme.

9
10 89. Class-wide reliance can be inferred because Defendant's
11 misrepresentations were material, i.e. a reasonable consumer would consider
12 them important in deciding whether to buy Defendant's products.

13
14 90. Defendant's misrepresentations were a substantial factor and
15 proximate cause in causing damage and losses to Plaintiff and the members
16 of the Class.

17
18 91. Defendant engaged in this fraud to the Plaintiff and the Class
19 members' detriment to increase Defendant's own sales and profits.

20
21 92. Plaintiff and the members of the Class reasonably relied on
22 Defendant's representations. Absent Defendant's misrepresentations,
23 Plaintiff and the members of the Class would not have purchased the items
24 they purchased from Defendant, or, at the very least, they would not have paid
25 as much for the items as they ultimately did. Plaintiff and the Class members'
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1 reliance was a substantial factor in causing them harm.

2 93. Had the omitted information been disclosed, Plaintiff and the
3
4 members of the Class reasonably would have behaved differently. Among
5 other things, they would not have purchased the items they purchased from
6 Defendant or, at the very least, would not have paid as much for the items as
7
8 they did.

9 94. As a direct and proximate result of the above, Plaintiff and the
10
11 members of the Class have suffered damages because they would not have
12 purchased Defendant's products if they had known that the representations
13 were false, and/or they overpaid for the products because the products were
14
15 sold at a price premium due to the misrepresentations.

16 **COUNT III**
17 **BREACH OF CONTRACT**
18 **(On behalf of Plaintiff and the Class)**

19 95. Plaintiff repeats and realleges each and every allegation
20 contained in paragraphs 1–94 as if fully set forth herein.

21 96. Defendant offered products for sale to Plaintiff and the members
22
23 of the Class under the terms advertised on Defendant's website.

24 97. The terms of Defendant's offer provided that Defendant would
25
26 sell Plaintiff and the members of the Class products that have a market value
27
28 equal to the reference prices displayed. The terms also required that

1 Defendant provide Plaintiff and the members of the Class with the discount
2 listed on Defendant's website.

3
4 98. The specific discount was a material term of each contract.

5 99. The terms of the offer also provided that Plaintiff and the
6 members of the Class would pay Defendant for the products purchased.

7
8 100. Plaintiff and the members of the Class accepted Defendant's
9 offer and paid Defendant for the products they ordered, thereby satisfying all
10 conditions of their contracts.

11
12 101. Defendant breached the contracts with Plaintiff and the members
13 of the Class by failing to provide products that had a market value equal to
14 the reference price displayed on its website, and by failing to provide the
15 promised discount.

16
17 102. As a direct and proximate result of Defendant's breaches,
18 Plaintiff and the members of the Class were deprived of the benefit of their
19 bargained-for exchange, and have suffered damages in an amount to be
20 established at trial.

21
22
23 **COUNT IV**
24 **UNJUST ENRICHMENT**
25 **(On behalf of Plaintiff and the members of the Class)**

26 103. Plaintiff repeats and realleges each and every allegation
27 contained in paragraphs 1–102 as if fully set forth herein.

1 104. Plaintiff brings this claim in the alternative to the contract-based
2 claims, including the breach of contract claim.

3
4 105. Plaintiff brings this claim individually and on behalf of the
5 members of the Class against Defendant.

6 106. Plaintiff and the members of the Class conferred a benefit on
7 Defendant, which Defendant knew about, when it initiated its false pricing
8 scheme.

9
10 107. Plaintiff and members of the Class were, and many continue to
11 be, consumers of Defendant's products. They reasonably believed that
12 Defendant would not falsely advertise discounted products. Plaintiff and
13 members of the Class suffered financial losses when they were deceived into
14 purchasing products that they reasonably believed to be on sale. By inflating
15 the reference price and then offering a "sale," Defendant creates a false sense
16 of urgency, a misleading perception of value, and a misleading perception of
17 savings, tricking customers into paying more than they should or would for
18 Defendant's product. Customers who rely on advertised sales to make
19 informed decisions are deceived into paying a premium for the product and
20 do not receive a product worth as much as Defendant represented the product
21 to be worth.

22
23 108. This deceptive practice undermines fair competition and allows
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1 Defendant to profit unfairly. Defendant has accepted and retained these
2 benefits as a result of its sales of merchandise offered at a false discounted
3 price, making Defendant's retention of them unjust.
4

5 109. By its wrongful acts and omission described herein, including
6 engaging in deceitful and misleading advertising practices by using false
7 discounts to lure in consumers to purchase products they would not have
8 otherwise purchased or for amounts they would not have otherwise paid,
9 Defendant was unjustly enriched at the expense of Plaintiff and the members
10 of the Class.
11
12

13 110. Plaintiff's and the Class members' detriment, and Defendant's
14 enrichment, were related to and flowed from the wrongful conduct alleged in
15 this Complaint.
16

17 111. Defendant has profited from its unlawful, unfair, misleading, and
18 deceptive practices at the expense of Plaintiff and the members of the Class.
19 It would be inequitable for Defendant to retain the profits, benefits, and other
20 compensation obtained from its wrongful conduct described herein.
21

22 112. Plaintiff and the members of the Class have been damaged as a
23 direct and proximate result of Defendant's unjust enrichment.
24

25 113. Plaintiff and the members of the Class are entitled to recover
26 from Defendant all amounts wrongfully collected and improperly retained by
27
28

1 Defendant.

2 114. As a direct and proximate result of Defendant's wrongful
3 conduct and unjust enrichment, Plaintiff and the members of the Class are
4 entitled to restitution of, disgorgement of, and/or imposition of a constructive
5 trust upon all profits, benefits, and other compensation obtained by Defendant
6 for its inequitable and unlawful conduct.
7
8

9 **COUNT V**
10 **VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES**
11 **ACT ("CLRA")**
12 **Cal. Civ. Code §§ 1750 *et seq.***
13 **(On behalf of Plaintiff and the California Subclass)**

14 115. Plaintiff repeats and realleges each and every allegation
15 contained in paragraphs 1–114 as if fully set forth herein.

16 116. Plaintiff brings this claim individually and on behalf of the
17 members of the California Subclass against Defendant.

18 117. Plaintiff and all members of the California Subclass are
19 "persons" and "consumers" as defined in Cal. Civ. Code § 1761(d).
20

21 118. Defendant is a "person" as defined in Cal. Civ. Code § 1761(c).

22 119. The products purchased by Plaintiff and the members of the
23 California Subclass from Defendant are "goods" as defined by Cal. Civ. Code
24 § 1761(a).
25

26 120. Plaintiff's and the California Subclass members' purchases from
27
28

1 Defendant constitute “transactions,” as defined by Cal. Civ. Code § 1761(e).

2 121. The CLRA prohibits “unfair methods of competition and unfair
3 or deceptive acts or practices undertaken by any person in a transaction
4 intended to result or which results in the sale or lease of goods or services to
5 any consumer.” Cal. Civ. Code § 1770.
6

7 122. As alleged herein, Defendant engaged in unfair and deceptive
8 acts or practices insofar as they made and disseminated false and misleading
9 statements of facts in its advertisements to class members by using false
10 reference prices and advertising fake discounts in violation of the CLRA. *See*
11 *Id.*
12

13 123. Defendant’s conduct as described herein was and is in violation
14 of the CLRA. Defendant’s conduct violates at least the following enumerated
15 CLRA provisions:
16

17 a. Cal. Civ. Code § 1770(a)(5): Representing that goods or
18 services have characteristics, uses, benefits, or quantities
19 that they do not have or that a person has a sponsorship,
20 approval, status, affiliation, or connection that the person
21 does not have;

22 b. Cal. Civ. Code § 1770(a)(9): Advertising goods or
23 services with intent not to sell them as advertised; and

24 c. Cal. Civ. Code § 1770(a)(13): Making false or
25 misleading statements of fact concerning reasons for,
26 existence of, or amounts of price reductions.

27 124. Defendant has violated Section 1770(a)(5) by representing that
28

1 products offered for sale on its website have characteristics or benefits that
2 they do not have. Specifically, Defendant represents that the value of their
3 products is greater than it actually is by advertising inflated reference prices
4 and false discounts.
5

6 125. Defendant has violated Section 1770(a)(9) by advertising its
7 products as being offered at a discount, when in fact Defendant do not intend
8 to sell the products at a discount.
9

10 126. Defendant has violated Section 1770(a)(13) by misrepresenting
11 the regular reference price of products on the Akira's website and by
12 advertising false discounts and savings.
13

14 127. Defendant's practice of misrepresenting, actively concealing,
15 and/or failing to disclose the true prices of the products listed on its website
16 violated and continues to violate the CLRA.
17

18 128. Defendant's misrepresentations were likely to deceive, and did
19 deceive, Plaintiff and reasonable consumers. Defendant knew, or should have
20 known, that these statements were inaccurate and misleading.
21

22 129. Defendant's misrepresentations were intended to induce
23 reliance, and Plaintiff reasonably relied on them when making her purchase.
24 Defendant's misrepresentations were a substantial factor in Plaintiff's
25 purchase decision.
26
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1 130. Defendant's deceptive practices significantly impacted Plaintiff
2 and the members of the California Subclass. The misleading information
3 presented was material, meaning a reasonable person would consider it
4 heavily when deciding to buy products. This false information directly caused
5 financial harm. Plaintiff and the members of California Subclass ended up
6 purchasing goods they otherwise would not have purchased or spending more
7 than the products' true value.
8

9
10 131. Class-wide reliance can be inferred because Defendant's
11 misrepresentations were material, in that a reasonable consumer would
12 consider them important when deciding whether to buy a product and how
13 much to pay for a product.
14

15
16 132. Defendant's misrepresentations were a substantial factor and
17 proximate cause in causing damages and losses to Plaintiff and the members
18 of the California Subclass.
19

20 133. Plaintiff and the members of the California Subclass were injured
21 as a direct and proximate result of Defendant's conduct because they would
22 not have purchased the products if they had known the truth, and/or they
23 overpaid for the products because the products were sold at a price premium
24 due to the misrepresentation.
25

26 134. Accordingly, pursuant to Cal. Civ. Code § 1780(a)(2), Plaintiff,
27
28

1 on behalf of herself and all other members of the California Subclass, seeks
2 injunctive relief.

3
4 135. The practices outlined above have caused significant harm to
5 Plaintiff, the California Subclass, and the public at large. Plaintiff and the
6 California Subclass members' injuries were proximately caused by
7 Defendant's unlawful and deceptive business practices. These unlawful and
8 unfair practices are ongoing and will likely continue unless stopped.
9 Therefore, Plaintiff seeks a permanent injunction to prevent Defendant from
10 engaging in such deceptive tactics. Additionally, Plaintiff seeks compensation
11 for attorney fees and costs incurred. Finally, under the CLRA, Plaintiff seeks
12 a public injunction to protect the general public from Defendant' misleading
13 advertising and omissions.
14
15
16

17 136. Pursuant to Cal. Civ. Code § 1782(a), on August 1, 2024,
18 Plaintiff's counsel served Defendant with notice of its CLRA violations by
19 certified mail, return receipt requested. Delivery was confirmed on August 5,
20 2024.
21

22 137. Defendant has failed to provide appropriate relief for their CLRA
23 violations within 30 days of its receipt of Plaintiff's demand notice.
24 Accordingly, pursuant to §§ 1780 and 1782(b) of the CLRA, Plaintiff is
25 entitled to recover actual damages, punitive damages, attorneys' fees and
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1 costs, and any other relief the Court deems proper.

2
3 **COUNT VI**
4 **VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW**
5 **(“FAL”)**
6 **Cal. Bus. & Prof. Code §§ 17501 *et seq.***
7 **(On behalf of Plaintiff and the California Subclass)**

8 138. Plaintiff repeats and realleges each and every allegation
9 contained in paragraphs 1–137 as if fully set forth herein.

10 139. Plaintiff brings this claim individually, and on behalf of the
11 members of the California Subclass against Defendant.

12 140. Defendant has violated Section 17501 of the California Business
13 and Professions Code.

14 141. Defendant has engaged in false or misleading advertising in
15 violation of the FAL. Defendant advertised, and continues to advertise,
16 reference prices and “sale” prices that are false, misleading and/or have the
17 tendency and likelihood to deceive reasonable consumers. *Brady v. Bayer*
18 *Corp.*, 26 Cal. App. 5th 1156, 1173 (2018) (“these laws prohibit ‘not only
19 advertising which is false, but also advertising which[,] although true, is either
20 actually misleading or which has a capacity, likelihood or tendency to deceive
21 or confuse the public.’”). To state a claim under the FAL “‘it is necessary only
22 to show that ‘members of the public are likely to be deceived.’” *Id.* (citations
23 omitted).

1 142. Defendant engaged in deceptive advertising practices within
2 California and nationwide. These practices involved promoting its products
3 through online platforms that contained untrue or misleading statements about
4 the advertised goods. Notably, Defendant knew, or should have known with
5 reasonable diligence, the information they disseminated was inaccurate.
6

7
8 143. As alleged more fully above, Defendant advertises reference
9 prices on its website along with discounts.

10 144. The reference prices advertised by Defendant were not the
11 prevailing market prices for the products within three months preceding
12 publication of the advertisement.
13

14 145. Defendant's reference price advertisements do not state clearly,
15 exactly, and conspicuously when, if ever, the former reference prices
16 prevailed. Indeed, the advertisements do not indicate whether or when the
17 purported former reference prices were offered at all.
18

19
20 146. The deceptive advertising practices employed by Defendant led
21 Plaintiff and the members of the California Subclass to make decisions based
22 on inaccurate information. Defendant's misrepresentations were intended to
23 induce reliance, and Plaintiff reasonably relied on these misrepresentations
24 when making her purchase decision.
25

26 147. Class-wide reliance can be inferred because Defendant's
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1 misrepresentations were material.

2 148. Defendant's misrepresentations were a substantial factor and
3
4 proximate cause in damages to Plaintiff and the members of the California
5 Subclass.

6 149. Plaintiff and the members of the California Subclass were injured
7
8 as a direct and proximate result of Defendant' conduct because they would
9 not have purchased the products if they had known the truth, and/or they
10 overpaid for the products because the products were sold at a price premium
11 due to the misrepresentation.
12

13 **COUNT VII**
14 **Violation of California's False Advertising Law, Bus & Prof. Code**
15 **§§17500 *et seq.***
16 **(On behalf of Plaintiff and the California Subclass)**

17 150. Plaintiff repeats and realleges each and every allegation
18 contained in paragraphs 1–149 as if fully set forth herein.

19 151. Plaintiff brings this claim individually and on behalf of the
20 California Subclass.
21

22 152. Defendant has violated Section 17500 of the California Business
23 and Professions Code.

24 153. As alleged more fully above, Defendant has made and
25 disseminated false and misleading statements of facts in advertisements to
26 Plaintiff and the California Subclass members by advertising false reference
27
28

1 prices and false discounts regarding its products.

2 154. Defendant's representations were likely to deceive, and did
3 deceive, Plaintiff and reasonable consumers. Defendant knew, or should have
4 known, that these statements were inaccurate and misleading.
5

6 155. Defendant's misrepresentations were intended to induce
7 reliance, and Plaintiff reasonably relied on the statements when purchasing
8 the products. Defendant's misrepresentations were a substantial factor in
9 Plaintiff's purchase decision.
10

11 156. Class-wide reliance can be inferred because Defendant's
12 misrepresentations were material in that they concerned the price of the
13 product.
14

15 157. Defendant's misrepresentations were a substantial factor and
16 proximate cause in damages to Plaintiff and the members of the California
17 Subclass.
18

19 158. Plaintiff and the members of the California Subclass were injured
20 as a direct and proximate result of Defendant's conduct because they would
21 not have purchased the products if they had known the truth, and/or they
22 overpaid for the products because the products were sold at a price premium
23 due to the misrepresentation.
24
25

26 **COUNT VIII**
27 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
28

1 (“UCL”)
2 **Bus. Prof. Code §§ 17200, *et seq.***
3 **(On behalf of Plaintiff and the California Subclass)**

4 159. Plaintiff repeats and realleges each and every allegation
5 contained in paragraphs 1–158 as if fully set forth herein.

6 160. Plaintiff brings this claim individually and on behalf of herself
7 and all members of the California Subclass.
8

9 161. The UCL prohibits and provides civil remedies for unfair
10 competition. Its purpose is to protect both consumers and competitors by
11 promoting fair competition in commercial markets for goods and services. In
12 service of that purpose, the California legislature framed the UCL’s
13 substantive provisions in broad, sweeping language. By defining unfair
14 competition to include any “any unlawful, unfair or fraudulent business act or
15 practice,” the UCL permits violations of other laws to serve as the basis of an
16 independently actionable unfair competition claim and sweeps within its
17 scope acts and practices not specifically proscribed by any other law.
18
19

20
21 162. Defendant’s acts and omissions alleged herein, specifically
22 Defendant’s violations of the CLRA and FLA, constitute unfair competition
23 and/or unlawful, unfair, or fraudulent business practices in violation of the
24 UCL.
25

26 163. Defendant’s actions and omissions have violated, and continue
27
28

1 to violate, the “unlawful” prong of the UCL by creating misleading
2 advertisements with inflated reference prices and false discounts.
3
4 Additionally, Defendant has engaged in deceitful practices as outlined in Cal.
5 Civ. Code §§ 1705, 1709, and 1713. Further, Defendant engaged in unlawful
6 conduct by violating the Federal Trade Commission Act (“FTCA”), which
7 prohibits “unfair or deceptive acts or practices in or affecting commerce” and
8 prohibits the dissemination of false advertisements. 15 U.S.C. § 45(a)(1), 15
9 U.S.C. § 52(a). As the FTC’s regulations make clear, Defendant’s false
10 pricing scheme violates the FTCA. 16 C.F.R. §§ 233.1, *et seq.*

13 164. As further alleged herein, Defendant’s conduct also violates the
14 “deceptive” prong of the UCL in that Defendant’s representations that its
15 products were on sale, that the sale was limited in time, that the products had
16 a specific regular price, and that the customers were being offered discounts
17 from a higher value, were false and misleading.

20 165. Defendant’s material misrepresentations, omissions, and lack of
21 disclosure are likely to mislead reasonable and potential customers, along
22 with the general public. These practices are inherently deceptive and mislead
23 consumers.

25 166. Plaintiff and the members of the California Subclass relied upon
26 Defendant’s misrepresentations and omissions, as set forth above.
27
28

1 167. Defendant’s misrepresentations and omissions are significant
2 because a reasonable consumer would consider this information when making
3 purchasing decisions. Plaintiff reasonably relied upon this misleading
4 information and would have acted differently if he had been presented with
5 accurate details. Similarly, class-wide reliance can be inferred because
6 Defendant’s misrepresentations were material in that they concerned the price
7 of the product.
8

10 168. Defendant’s conduct, as alleged above, was immoral, unethical,
11 oppressive, unscrupulous, and substantially injurious to consumers.
12

13 169. Defendant violated the “unfair” prong of the UCL by falsely
14 representing that that its products were on sale, that the sale was limited in
15 time, that the products had a regular reference price higher than the sale price,
16 and that the customers were receiving discounts.
17

18 170. Defendant violated established public policy by violating the
19 CLA, the FAL, and the FTCA.
20

21 171. Defendant’s misrepresentations and omissions resulted in it
22 receiving more money from Plaintiff and the members of the California
23 Subclass than it rightfully deserved. This money is subject to restitution. As
24 a direct consequence of Defendant’s unfair, unlawful, and deceptive
25 practices, Plaintiff and the members of the California Subclass suffered
26
27
28

1 financial losses.

2 172. Plaintiff and the members of the California Subclass were injured
3
4 as a direct and proximate result of Defendant's conduct because they would
5 not have purchased the products if they had known the truth, and/or they
6 overpaid for the products because the products were not worth the "regular"
7
8 reference price represented by Defendant.

9 173. The harm to Plaintiff and the members of the California Subclass
10 greatly outweighs the public utility of Defendant's conduct. False statements
11
12 in connection with the sale of consumer products harms consumers and
13 injures competition. There is no public utility to misrepresenting the price of
14 a consumer product. This injury was not outweighed by any countervailing
15
16 benefits to consumers or competition.

17 174. Plaintiff and the members of the California Subclass could not
18
19 have reasonably avoided the injury caused by Defendant.

20 175. Without an injunction, Defendant will continue to harm Plaintiff,
21 the members of the California Subclass, and prospective consumers at large.
22 Defendant's misrepresentations and omissions are ongoing, and even if it
23
24 were to stop temporarily, there is a risk of it repeating these deceptive
25
26 practices.

27 176. Plaintiff, on behalf of herself and all members of the California
28

1 Subclass, seeks public injunctive relief under the UCL to safeguard the
2 general public from Defendant's deceptive discount advertising and
3 misleading omissions.
4

5 177. Defendant's actions have caused substantial harm to Plaintiff, the
6 California Subclass, and the public. These practices are ongoing and are likely
7 to continue unless stopped.
8

9 178. Therefore, Plaintiff seeks a permanent injunction to prevent
10 Defendant from engaging in such unlawful, unfair, and fraudulent business
11 practices. Additionally, Plaintiff seeks restitution for the California Subclass
12 in an amount to be determined at trial, as well as attorney fees and costs under
13 Cal. Code Civ. Proc. § 1021.5. Further Plaintiff, on behalf of the members of
14 the California Subclass, requests that he be awarded all relief as may be
15 available by law, pursuant to Cal. Bus. Prof. Code § 17203.
16
17

18 **PRAYER FOR RELIEF**
19

20 WHEREFORE, Plaintiff respectfully requests that the Court enter
21 judgment against Defendant as follows:
22

23 A. Certifying this action as a class action under Rule 23(b)(2) and
24 (b)(3) of the Federal Rules of Civil Procedure and naming Plaintiff as a
25 representative of the Classes and Plaintiff's undersigned attorneys as Class
26 Counsel to represent the Classes;
27
28

1 B. For an Order declaring that Defendant' conduct violated the laws
2 referenced herein;

3
4 C. For an Order finding in favor of Plaintiff and the Classes on all
5 counts asserted herein;

6 D. For an Order awarding actual, statutory, treble, and punitive
7 damages as applicable;

8
9 E. For an Order awarding pre-judgment and post-judgment interest
10 on all amounts awarded;

11
12 F. For injunctive relief as pleaded or as the Court may deem proper;

13 G. For disgorgement and restitution to Plaintiff and the members of
14 the Classes of all monies received or collected from Plaintiff and the members
15 of the Classes and all other forms of equitable relief;

16
17 H. For an Order awarding reasonable attorneys' fees and expenses
18 and costs of suit; and

19
20 I. For such other and further relief as the Court may deem proper.

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands trial by jury as to all triable issues.
23
24

25 Dated: March 10, 2025

Respectfully submitted,

1 By: /s/ Kyle McLean

2 Kyle McLean (SBN 330580))

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16 **Pro hac vice forthcoming*